

**VOL 2043****CR-02-2104**

COURT OF CRIMINAL APPEALS NO.

## APPEAL TO ALABAMA COURT OF CRIMINAL APPEALS

FROM

CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMACIRCUIT COURT NO. CC 2002-1417CIRCUIT JUDGE HOBBSType of Conviction / OrderAppealed From: INTENTIONAL MURDERSentence Imposed: LIFE WITHOUT PAROLEDefendant Indigent:  YES  NO

DARRYL JEVON JOYCE

NAME OF APPELLANT

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<small>(Address)</small>	MONTGOMERY	AL	36104
<small>(City)</small>	<small>(State)</small>	<small>(Zip Code)</small>	

V.

STATE OF ALABAMA

(State represented by Attorney General)

NAME OF APPELLEE

NOTE: If municipal appeal, indicate above, and enter name and address of municipal attorney below.

(For Court of Criminal Appeals Use Only)

Part 2 of 5

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IN THE FIFTEENTH JUDICIAL CIRCUIT  
IN AND FOR MONTGOMERY COUNTY  
MONTGOMERY, ALABAMA

STATE OF ALABAMA,  
Plaintiff,  
VS.  
DARRYL J. JOYCE,  
Defendant

**COPY**

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6                   Plaintiff,                         )  
7                   VS.                                 ) CC NO. 02-1417  
8                   DARRYL J. JOYCE,                 )  
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IN THE FIFTEENTH JUDICIAL CIRCUIT  
IN AND FOR MONTGOMERY COUNTY  
MONTGOMERY, ALABAMA

STATE OF ALABAMA,

Plaintiff,

DARRYL J. JOYCE, NO. 02-1417

Defendant.

TRANSCRIPT OF PROCEEDINGS  
JULY 21 - 22, 2003  
MONTGOMERY COUNTY COURTHOUSE  
COURTROOM 3-A

BEFORE: THE HON. TRUMAN M. HOBBS, JR.

CIRCUIT JUDGE

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**FOR THE DEFENDANT:**

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MONTGOMERY, ALABAMA

JUDY E. SHELTON  
OFFICIAL COURT REPORTER

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THE COURT: It's still morning so good morning everybody. I told you I'd be seeing some of you shortly. We are about to start the selection of the jury in the case of State of Alabama versus Darryl Joyce.

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Mr. Joyce is charged with the crime of murder in this case. I'm going to tell you that because in a little bit I will be asking if any of you know anything about the facts of this case.

20

21

22

23

24

25

Before I do that, I want to introduce to y'all everybody that is seated at the table here. Representing the State of Alabama are Deputy District Attorneys Will Powell and Ms. Vernetta Perkins.

MR. POWELL: Good morning.

MS. PERKINS: Good morning.

THE COURT: Ms. Perkins, who is --

MR. POWELL: This is Ms. Sally Friendly, Judge. She is the victim's

1                   mother. She will be seated with us at  
2                   counsel's table this week.

3                   THE COURT: Okay. Ms. Sally  
4                   Friendly. Over here is Mr. Wiley  
5                   Hartley. He is an attorney for the  
6                   defendant. Seated with him is Mr.  
7                   Joyce. I have introduced everybody up  
8                   here to you.

9                   What I'm going to do now is ask  
10                  the clerk to call the roll. When he  
11                  calls your name, if you would please  
12                  stand up, tell us what you do for a  
13                  living, what your spouse does for a  
14                  living. If you are retired, tell us what  
15                  you did before you retired. And if your  
16                  spouse retired, what your spouse did  
17                  before he or she retired. Okay.

18                  (At which time the roll of the  
19                  venire was called.)

20                  THE COURT: Okay. I'm going to  
21                  ask everybody a few questions. If you  
22                  need to respond to a question, if you  
23                  would stand up and repeat your name for  
24                  us and tell us whatever information you  
25                  need to give us.

1                   If I ask a question that refers  
2 to family members, I'm referring to your  
3 spouse, your children, your  
4 grandchildren, your parents,  
5 grandparents, brothers and sisters. Let  
6 me say up front, we are not trying to  
7 delve into your personal life. We are  
8 not here to embarrass anybody. If you  
9 need to make a response that you find  
10 would be embarrassing to say in front of  
11 a room full of strangers, that's fine.

12                  When we ask everybody to go  
13 back to the jury assembly room, you just  
14 stay behind and share with us whatever  
15 information you think you need to give  
16 us.

17                  As I said earlier, Mr. Joyce is  
18 seated here. Are any of y'all related to  
19 him by blood or marriage or anyway  
20 personally acquainted with Mr. Joyce?  
21 Are any of y'all related by blood or  
22 marriage or personally acquainted with  
23 his attorney Wiley Hartley who is seated  
24 here? Have any of y'all ever been to his  
25 office for any reason?

1                         The State of Alabama is  
2                         represented by Deputy District Attorney  
3                         Will Powell and Vernetta Perkins. Our  
4                         District Attorney is Ellen Brooks. Are  
5                         any of y'all related by blood or marriage  
6                         to any of those folks or personally  
7                         acquainted with them for any reason?  
8                         Yes, ma'am?

9                         PROSPECTIVE JUROR: My name is  
10                         Sarah Andrews. I'm acquainted with Ellen  
11                         Brooks.

12                         THE COURT: How are you  
13                         acquainted, Ms. Andrews?

14                         PROSPECTIVE JUROR: I handled  
15                         her insurance when I was with an  
16                         insurance company.

17                         THE COURT: Other than -- was  
18                         she personally your client?

19                         PROSPECTIVE JUROR: Well, no.  
20                         She was just one of our clients.

21                         THE COURT: Did you know her  
22                         personally at all?

23                         PROSPECTIVE JUROR: I knew her  
24                         personally, yes.

25                         THE COURT: Just to speak to

1                   her?

2                   PROSPECTIVE JUROR: Yes.

3                   THE COURT: She has never been  
4                   to your house?

5                   PROSPECTIVE JUROR: No.

6                   THE COURT: Y'all don't go eat  
7                   meals together or anything like that?

8                   PROSPECTIVE JUROR: No, sir.

9                   THE COURT: Thank you, Ms.  
10                  Andrews. Anybody else personally  
11                  acquainted with any of the District  
12                  Attorneys or Ms. Brooks? Yes, ma'am?

13                  PROSPECTIVE JUROR: I know  
14                  Ellen Brooks. We served on the American  
15                  Cancer Society Board together. We don't  
16                  go to each other's houses or anything  
17                  like that.

18                  MS. PERKINS: What is your  
19                  name?

20                  PROSPECTIVE JUROR: Lisa  
21                  Beers.

22                  THE COURT: And there was one  
23                  more. Yes, ma'am?

24                  PROSPECTIVE JUROR: I'm Connie  
25                  Colvin and it's just kind of a social

1 contact but not like to each other's home  
2 or anything.

3 THE COURT: Y'all know her to  
4 speak to her sort of thing?

5 PROSPECTIVE JUROR: Right.

6 THE COURT: Would the fact that  
7 y'all know Ms. Brooks personally, would  
8 that affect your decision in this case  
9 one way or the other?

10 PROSPECTIVE JUROR: No, it  
11 wouldn't.

12 THE COURT: Y'all could call it  
13 right down the middle?

14 PROSPECTIVE JUROR: I don't  
15 believe it would be a problem.

16 MR. HARTLEY: Would you ask  
17 those questions of Mr. Bledsoe. I  
18 believe his wife works in the DA's  
19 office. Would you ask him the same  
20 line.

21 THE COURT: Mr. Bledsoe, your  
22 wife works in the DA's office?

23 PROSPECTIVE JUROR: Yes.

24 THE COURT: Are you personally  
25 acquainted with Ms. Brooks?

1 PROSPECTIVE JUROR: I have only  
2 spoken to her. We are not personally  
3 acquainted.

4 THE COURT: Would the fact that  
5 your wife works in the District  
6 Attorney's office, would that make it  
7 difficult for you to serve on a jury  
8 where her office is involved?

9 PROSPECTIVE JUROR: I don't  
10 believe it would.

11 THE COURT: You still think you  
12 could call it right down the middle?

13 PROSPECTIVE JUROR: I'll do my  
14 best.

15 THE COURT: Okay.

16 MR. HARTLEY: Thank, you,  
17 Judge.

18 THE COURT: Anybody else? Any  
19 of y'all know anything about the facts  
20 and circumstances of this case? Is  
21 anybody here personally acquainted with  
22 Mr. Friendly, the victim in this case?  
23 Do any of y'all know his mother Ms.  
24 Friendly who is sitting over here?  
25 Related by blood or marriage to the

1                   Friendly's, anybody?

2                   I'm going to let y'all ask  
3                   about the witnesses because all I have  
4                   got up here is a lengthy list. I don't  
5                   know who you are actually going to call.  
6                   So I will let y'all hash that out.

7                   Anyone here or any of your  
8                   family been employed by the Montgomery  
9                   Police Department or any other law  
10                  enforcement agency? Yes, Ms. Andrews?

11                  PROSPECTIVE JUROR: My son is a  
12                  DEA instructor at Quantico.

13                  THE COURT: Thank you. Anybody  
14                  else?

15                  PROSPECTIVE JUROR: I have a  
16                  police officer residing with me on a  
17                  temporary basis. He is going through a  
18                  divorce. It is a nephew by a previous  
19                  marriage.

20                  THE COURT: And your name is,  
21                  sir?

22                  PROSPECTIVE JUROR: Durden.

23                  THE COURT: Mr. Durden, thank  
24                  you.

25                  PROSPECTIVE JUROR: He is a

1 motorcycle officer.

2 THE COURT: Okay. Yes, sir?

3 PROSPECTIVE JUROR: I worked as  
4 a reserve deputy sheriff in Lee County  
5 for about eight years.

6 THE COURT: And your name  
7 again?

8 PROSPECTIVE JUROR: Eubanks.

9 THE COURT: Mr. Eubanks, thank  
10 you. Other than Mr. Bedsole, anybody  
11 here have a family member that works in  
12 the DA's office? Ever been employed --  
13 has anybody in your immediate family ever  
14 been employed with the District  
15 Attorney's office? Anybody here have an  
16 interest -- I'm sorry, ma'am?

17 PROSPECTIVE JUROR: Just  
18 friends, a neighbor?

19 THE COURT: Well, family  
20 members.

21 PROSPECTIVE JUROR: No. A  
22 close friend.

23 THE COURT: Anybody here -- I'm  
24 sorry. Yes, sir?

25 PROSPECTIVE JUROR: Yes. Ray

1 Caudill. I'm in that volunteer program  
2 for the Montgomery police. I don't know  
3 that that has an impact here or not.

4 THE COURT: You just -- you  
5 fill in --

6 PROSPECTIVE JUROR: Yes. We  
7 patrol special events and I'm doing some  
8 work down at the crime scene laboratory.

9 THE COURT: Okay. Thank you,  
10 sir. Anybody else? Anybody here have an  
11 interest in the outcome of this case  
12 either way, either for a conviction or  
13 for acquittal? Anybody here for whatever  
14 reason just doesn't think you can be fair  
15 to one side or the other?

16 In other words, is there  
17 anybody here that just doesn't think that  
18 for whatever reason they can't call it  
19 right down the middle, be fair to  
20 everybody in this case?

21 This is one of those questions  
22 that could cause somebody some  
23 embarrassment. If you want to wait until  
24 we finish with the questions, that would  
25 be fine with me.

1                    Does anybody have anyone in  
2                    your immediate family who has been  
3                    charged with an offense of murder within  
4                    the last twelve months? Okay. I will  
5                    let the attorneys ask some questions  
6                    now.

7 MR. POWELL: Good morning.

PROSPECTIVE JURORS: Good  
morning.

10 MR. POWELL: Again, my name is  
11 Will Powell. Before we go any further,  
12 now that we have had an opportunity to be  
13 in here together and observe one another,  
14 I want to ask now that y'all have had an  
15 opportunity to see Ms. Friendly, does  
16 anyone recognize her, Ms. Sally  
17 Friendly? They live over off the  
18 Boulevard. Okay.

19 I want to talk about the  
20 Friendlys. This is James Friendly's  
21 brother, Kevin. Stand up Kevin. Does  
22 anyone recognize Kevin? Okay. Have a  
23 seat.

24 Now the victim in this case,  
25 James Friendly, also went by the name of

1 Boo. Does anyone recognize him with that  
2 additional piece of information? And  
3 along the same lines, the defendant is  
4 known also by the name of Poncho or  
5 Puncho or even Willie Faulk.

6 With that additional  
7 information does anyone here know or  
8 think they may have heard of the  
9 defendant or the victim? Okay.

10 Now, stand up Detective  
11 Howton. This is Detective Gino Howton  
12 with the Montgomery Police Department,  
13 does anyone know Detective Howton?

14 Okay. Thank you. Some other  
15 names: Two brothers, Johnny Osborne and  
16 Brian Osborne. Does anybody know them or  
17 think they might? Another individual  
18 lives over in Smiley Court by the name of  
19 Eric Stewart, goes by the name of  
20 Rabbit. Anybody know Mr. Stewart?

21 PROSPECTIVE JUROR: I know Mr.  
22 Stewart.

23 MR. POWELL: You know Mr.  
24 Stewart? How do you know him without  
25 going --

1 PROSPECTIVE JUROR: I was  
2 married to his family.

3 MR. POWELL: You were married  
4 to that family at one time. And what is  
5 your name, ma'am?

6 PROSPECTIVE JUROR: Ella Boyd.

7 MR. POWELL: Ella Boyd. Thank  
8 you, Ms. Boyd. Anyone other than Ms.  
9 Boyd know of Mr. Stewart, or Rabbit, of  
10 that family? Okay.

11 One of our forensic experts  
12 that did the firearms analysis is Kathy  
13 or Katherine Richart with the Department  
14 of Forensic Science. Is anyone familiar  
15 with Ms. Richart?

16 The medical examiner that  
17 looked at Mr. Friendly's body that  
18 performed the autopsy is Ben Bristol, Dr.  
19 Ben Bristol. Does anyone know him?

20 One of the patrol officers is  
21 M.T. McCaskill and J. Mackey. Does  
22 anyone know them? The patrol supervisor  
23 at the scene was R. Wallace. Anybody  
24 know Officer Wallace?

25 PROSPECTIVE JUROR: Is that

1                   Richard Wallace?

2                   MR. POWELL: I'm not sure what  
3                   his name is. All I have is an initial.  
4                   I have only met him a couple times.

5                   OFFICER HOWTON: That's  
6                   Richard.

7                   MR. POWELL: Is that him,  
8                   Gino? It is? Yes, ma'am. What is your  
9                   name?

10                  PROSPECTIVE JUROR: Sarah  
11                  Andrews.

12                  MR. POWELL: Now Ms. Andrews,  
13                  how do you know Mr. Wallace?

14                  PROSPECTIVE JUROR: He was a  
15                  friend of my son's and they grew up  
16                  together.

17                  MR. POWELL: So you know him  
18                  pretty well. Would the fact that Officer  
19                  Wallace was the supervising patrol  
20                  officer at this crime scene affect your  
21                  opinion of the case one way or the  
22                  other?

23                  PROSPECTIVE JUROR: No.

24                  MR. POWELL: You believe you  
25                  could sit and impartially hear both the

1 state and the defendant's evidence and  
2 judge this in a fair and impartial  
3 manner?

4 PROSPECTIVE JUROR: Yes.

5 MR. POWELL: Now the evidence  
6 technician that is involved in this case  
7 is Brian Jurkofsky. Is anyone familiar  
8 with Detective Jurkofsky? Another  
9 detective that worked the scene was a  
10 Detective J.W. Haynie and Detective C.J.  
11 Grandison. Is anyone familiar with  
12 either one of those detectives?

13 Now before I go into this next  
14 set of witnesses, let me ask you this  
15 question. This happened over in Smiley  
16 Court. Who all knows where Smiley Court  
17 is? Okay.

18 Specifically, it happened over  
19 in the 400 block or 4000 block of Marlyn  
20 Street. A lady over there was having a  
21 party at her residence and the shooting  
22 occurred at about 11:30 that night.

23 Obviously, it was a party so  
24 there were a whole bunch of people  
25 there. We are not going to call all of

1                   them as witnesses, not everybody saw what  
2                   happened. All right? But now just -- is  
3                   anyone familiar with specifically 4000-A  
4                   over on Marlyn Court? Yes, ma'am?

5                   PROSPECTIVE JUROR: Ella Boyd.

6                   MR. POWELL: Ms. Boyd. Anyone  
7                   other than Ms. Boyd? The lady that lived  
8                   there at the time, her name was Nicole  
9                   Judkins. Do you know her? All right,  
10                  Ms. Boyd. Anyone other than Ms. Boyd?

11                  At the time she was having a  
12                  birthday party for an individual named  
13                  Christopher McQueen. Does anyone know  
14                  Mr. McQueen? Besides Ms. Boyd.

15                  Mr. McQueen went by the name of  
16                  Flip if that helps anybody out. It was  
17                  Flip's birthday, and Ms. Judkins was  
18                  having a party for him. Some other  
19                  individuals at the party whose names you  
20                  might hear are Bryant Thomas. Are you  
21                  familiar with him?

22                  PROSPECTIVE JUROR: No.

23                  MR. POWELL: Also goes by B.T.  
24                  Another person at the party was Antwan  
25                  Giles. Anyone know him? Another

1 individual named Darryl Foggy. Also goes  
2 by the name D. Anyone familiar with that  
3 name? The lady that lived across the  
4 street, her name was Amy Albright. Her  
5 name may come up in this.

6 Just because I'm reading all  
7 these names out doesn't necessarily mean  
8 all these people are going to be called  
9 as witnesses. It's just these are the  
10 names you are going to hear most  
11 frequently throughout the course of the  
12 trial. And if any of you know them, we  
13 need to ask some questions.

14 Ms. Boyd, what we are going to  
15 do, after all the questions are over  
16 with, if you will just stay back instead  
17 of going through all these individually  
18 with everyone here.

19 Now with what I have said so  
20 far with the names, the location of  
21 Smiley Court, with the birthday party,  
22 has anyone heard or read anything in the  
23 paper or heard anything on television  
24 about this shooting that occurred last  
25 year in February?

1                   Ms. Boyd has heard this  
2 before. She has got a few more details.  
3 Anyone else? Okay. Now, I just have a  
4 few more follow-up questions. First off,  
5 this is -- obviously, it was a birthday  
6 party. There were lots of people  
7 around. They were doing things that  
8 happen at a birthday party over in Smiley  
9 Court. There was a lot of drinking going  
10 on. There is going to be some instances  
11 where people were using drugs; sometimes  
12 marijuana, sometimes cocaine.

13                  Is there anyone who just is  
14 going to automatically knee-jerk reaction  
15 exclude somebody's testimony simply  
16 because alcohol or drugs are involved?  
17 Okay. So I'm taking by no one answering  
18 that question yes, you are at least going  
19 to listen to the folks that testify and  
20 hear what they have to say before you  
21 reach any kind of opinion on whether or  
22 not they were too drunk or too high or  
23 too stoned or whatever to see what they  
24 may have seen because, again, this is at  
25 a party. It is not just going to be this

1                   witness or that witness. Most of the  
2                   witnesses in this case are going -- were  
3                   at the party on Friday or Saturday night  
4                   at 11:30 at night. It is the kind of  
5                   case we got. That's what we are dealing  
6                   with.

Now, I looked at some of your  
questionnaires. How many of y'all watch  
crime shows like CSI and that kind of  
stuff? Just about everybody. Does

1 everyone understand that the law on  
2 television is a whole lot different than  
3 what Judge Hobbs is going to tell you  
4 from the bench? Does everybody  
5 understand that? And that what they do  
6 on CSI is television and that doesn't  
7 have a whole lot to do with reality.  
8 Does everybody understand that?

9 Now there were some forensics  
10 done in this case. There were some shell  
11 casings that were analyzed. There was an  
12 autopsy that was done. But pretty much  
13 when you boil this down, it's going to  
14 come down to the witnesses, who saw who  
15 do what. That's important.

16 MR. HARTLEY: Judge, I  
17 appreciate Mr. Powell's explanation to  
18 the jury but this is hardly in the form  
19 of a question to the jury.

20 THE COURT: If you have got a  
21 question, Mr. Powell, let's get to it.

22 MR. POWELL: And my question  
23 is: Is there anyone who is going to be  
24 hung up on what they have seen on  
25 television or asking questions, well, I

1       saw this on television, why couldn't they  
2       do that back in the jury room as opposed  
3       to hearing the evidence and listening to  
4       the law as the Judge reads it? So  
5       everybody can agree that you will decide  
6       the case based on what you hear in the  
7       courtroom, not what you may or may not  
8       have seen on television. Okay.

9                  Now, my next question: Is  
10       there anybody in here who just doesn't  
11       like cops? Just decided, you know, you  
12       heard bad stories or whatever. Okay.  
13       Got a traffic ticket and you didn't think  
14       you were speeding and he gave it to you  
15       anyway. You couldn't get out of it,  
16       anything like that?

17                  On the other hand, is there  
18       anyone who just because someone has a  
19       badge and wears a police uniform is going  
20       to believe that person more than you  
21       would, say, a civilian witness? Anyone  
22       put more emphasis on a police officer's  
23       testimony simply because they are a sworn  
24       officer of the law? Okay.

25                  So everybody can pretty much

1 agree to look at the witnesses and judge  
2 them based on what you see in this  
3 courtroom here today? All right.  
4 Because if there is -- if anybody is  
5 bringing anything to court with them  
6 today, this is the only time we have to  
7 ask about it and find out. Not that it  
8 is bad. We all have our opinions. We  
9 all have our experiences. That's what  
10 makes the system work because we put  
11 twelve people over there and they can all  
12 put their minds together and judge this  
13 evidence and come out with the right  
14 verdict in this case. Okay?

15 Now speaking of that, as the  
16 State of Alabama, it is our job to prove  
17 to the twelve people that get selected  
18 for that jury that this man is guilty  
19 beyond a reasonable doubt. Has anybody  
20 heard that term before, reasonable  
21 doubt? The Judge is going to explain it  
22 to you.

23 But as Mr. Joyce sits in this  
24 courtroom right now, he is presumed  
25 innocent. It is our job to put forth

1 evidence and testimony and exhibits and  
2 witnesses to prove he did what we say he  
3 did. Okay?

4 Now here is my question: Is  
5 there anyone that is going to require the  
6 State of Alabama to remove all doubt from  
7 this case? That may be kind of a  
8 convoluted question. Let me clarify  
9 that. I'm not saying you are going to  
10 have a doubt about this or about that  
11 necessarily as far as what happened but,  
12 for example, you may have a question in  
13 your mind, you know, where did this come  
14 from or what about that?

15 If you simply have a question  
16 in your mind that is not related to the  
17 murder charge, do y'all understand the  
18 difference between having an unanswered  
19 question in the case and the State not  
20 meeting its burden beyond a reasonable  
21 doubt? Does that make sense? I'm  
22 getting confused here and I'm standing up  
23 here talking about it.

24 We are not required to answer  
25 every single possible question you may

1 have about that party that night and who  
2 was where and --

3 MR. HARTLEY: Judge, I think  
4 this is getting very far into the state  
5 of the evidence at the close of the case  
6 as opposed to questioning these jurors as  
7 to their --

8 THE COURT: Will, let's wrap it  
9 up.

10 MR. POWELL: So everybody  
11 agrees that there's a difference between  
12 all doubt and reasonable doubt. Okay.

13 Ms. Boyd, if you will stay  
14 after, we'll follow up. If there is  
15 anybody else based on any of the  
16 questions I've asked that wants to stay  
17 afterwards or because of any of the  
18 responses on the questionnaires or the  
19 supplemental questionnaires, just feel  
20 free to stay behind afterwards if you  
21 want to talk to us individually. Thank  
22 you.

23 THE COURT: Mr. Hartley.

24 MR. HARTLEY: Thank you,  
25 Judge. Good morning. I think y'all have

1           been asked probably a hundred questions  
2           in the last few minutes. So basically I  
3           think they have exhausted most of the  
4           topics but I do have a two-prong  
5           question. The easy one, I think, would  
6           be first.

7           I have read your questionnaires  
8           and only a few of you but -- maybe three  
9           or four or five indicated on the  
10          questionnaire that there might be some  
11          conflict with your ability to serve in  
12          the trial this week. I think maybe  
13          either for personal reasons or for  
14          scheduling matters or something like  
15          that. I invite you to stay behind if you  
16          need to to resolve that because I would  
17          like to ask if anybody has got a problem  
18          with serving on the jury of this trial,  
19          it might start today and go, we think,  
20          into late tomorrow, Judge? Is that what  
21          we think?

22           THE COURT: It better be over  
23          late tomorrow.

24           MR. HARTLEY: Okay. I realize  
25          that some of your responses indicate that

1           there might be some issue with you  
2           serving on the jury. I invite you to  
3           stay behind or either tell us right now  
4           if you have got a problem, if you want  
5           the judge to resolve it.

6           Then in a sort of related type  
7           question, both of in the questionnaire  
8           and the supplemental questionnaire, these  
9           -- each of those have questions  
10          pertaining to whether you or family  
11          members have been victims of crimes or  
12          have somehow been involved in a crime.

13          Again, I found on there  
14          positive -- or yes type responses on  
15          probably anywhere from a third to half of  
16          the questionnaires. I ask this of all of  
17          you, particularly of people who have  
18          family members or in some way connected  
19          to a serious crime like murder or  
20          manslaughter or a violent crime.

21          If the case were real, real  
22          close on the evidence at the close of the  
23          case, the defense and the state had just  
24          -- almost a tie or almost a match, is  
25          there anything in your personal

1                   experience about your having been either  
2                   connected to somebody who was involved in  
3                   a crime or the victim of a crime, if it  
4                   would sway your vote on the case if you  
5                   -- if your state of mind or your  
6                   existence is such that that fact might  
7                   affect your verdict in this case, I ask  
8                   you to stay behind and tell the Judge  
9                   about it because some of you have had  
10                  family members or somehow were connected  
11                  to very serious crimes. So I ask you to  
12                  stay with us if y'all meet either one of  
13                  those; one, you got a problem sitting on  
14                  the case for scheduling reasons or  
15                  personal reasons, or if you think that  
16                  something has happened in your life that  
17                  might affect your verdict. That's all I  
18                  have.

19                   THE COURT: Okay. Thank you.  
20                  Ladies and gentlemen, we are going to  
21                  start the selection of the jury. I don't  
22                  think y'all need to sit in here and watch  
23                  us do that. So I'm going to let y'all go  
24                  back to the jury assembly room. If you  
25                  would, if you need to respond to any of

1           the questions and you need to stay  
2           behind, just do so.

3                 Ms. Boyd, I know they have  
4           asked that you stay behind. You are  
5           probably upset that you didn't get  
6           invited to the party to begin with. It  
7           seems like you know everybody that was  
8           there anyway.

9                 If you would, just go on back  
10          to the jury assembly room. Don't break  
11          for lunch just yet. This will take us  
12          probably about thirty minutes. Then  
13          we'll bring the jurors back in.

14                 I will go ahead and tell you,  
15          if you are not selected for the jury, you  
16          are dismissed for the remainder of the  
17          day. Please call the code-a-phone number  
18          tonight so I can give you a little bit of  
19          good news here today. If you would go  
20          back to the jury assembly room. Thank  
21          you.

22                 (The following proceedings were  
23          held outside the presence of the jury  
24          venire.)

25                 MS. PERKINS: Judge, we have

1 three people standing.

2 THE COURT: Yes, sir?

3 PROSPECTIVE JUROR: All I  
4 wanted to do is clarify I mentioned that  
5 I was working over at the crime scene as  
6 a volunteer. All I'm doing over there  
7 -- and I have been there a total of six  
8 hours. All I'm doing over there is  
9 inputting some fairly old information on  
10 weapons into the computer.

11 You mentioned some names and I  
12 got some looks. I don't know the names  
13 of the people over there.

14 MR. POWELL: Yes, sir.

15 PROSPECTIVE JUROR: I just  
16 wanted to clarify that.

17 THE COURT: Okay. Thank you,  
18 sir. Appreciate you sharing that with  
19 us. Yes, ma'am?

20 PROSPECTIVE JUROR: You said  
21 something about if you had a family  
22 member or something that was involved in  
23 a crime.

24 THE COURT: Yes, ma'am.

25 PROSPECTIVE JUROR: It has been

1           a lot of years and the person is deceased  
2           that was involved in the crime. So --

3           MR. POWELL: If you don't mind  
4           me asking, what happened?

5           PROSPECTIVE JUROR: Well, it  
6           was my father. He shot somebody, I  
7           guess. So I was told. I wasn't here.

8           MR. POWELL: Yes, ma'am. Is  
9           there anything about that incident that  
10          would make you go for or against one side  
11          or the other?

12          PROSPECTIVE JUROR: No.

13          MR. HARTLEY: What is your name  
14          again?

15          PROSPECTIVE JUROR: Bailey,  
16          Myree.

17          MR. HARTLEY: Yes, ma'am.

18          PROSPECTIVE JUROR: I have  
19          another question. I don't know if this  
20          is relevant or not but this young lady  
21          here, is she involved in this crime or  
22          something? I notice she's been watching  
23          me all the time so I was wondering -- do  
24          you know me or do I know you? I don't  
25          think I know you.

1 UNKNOWN WITNESS: I don't think  
2 I do.

3 THE COURT: Okay.

4 PROSPECTIVE JUROR: I just  
5 wanted to clear that up.

6 THE COURT: Any followup?

7 MR. POWELL: The State doesn't  
8 have any, Judge.

9 THE COURT: Thank you, ma'am.

10 Appreciate it. What was her name?

11 MR. DARNIELLE: Bailey, Myree  
12 Bailey.

13 THE COURT: Anybody have any  
14 followup for Ms. Boyd?

15 MR. POWELL: Yes, ma'am. Ms.  
16 Boyd, basically, what have you heard  
17 about the incident? It sounds like you  
18 were pretty familiar with what happened  
19 out there that night.

20 PROSPECTIVE JUROR: I am. My  
21 son was out there.

22 THE COURT: What was your  
23 son --

24 PROSPECTIVE JUROR: Flip is his  
25 uncle. They talked about it.

1                   MR. POWELL: What was your  
2 son's name?

3                   PROSPECTIVE JUROR: Willie.

4                   MR. POWELL: Willie?

5                   PROSPECTIVE JUROR: He came out  
6 there after it happened. So -- and they  
7 told him about it and they talked to him  
8 about it.

9                   MR. POWELL: I don't have any  
10 followup, Judge.

11                  MR. HARTLEY: Let's approach  
12 the bench. Judge, I think we need to try  
13 to get a juror which basically has an  
14 independent mind. I think we have to be  
15 real careful because all of these  
16 questions --

17                  MR. POWELL: I don't want  
18 anybody who has personal knowledge like  
19 that being on the jury.

20                  THE COURT: So we agree?

21                  MS. PERKINS: Strike for cause.

22                  THE COURT: Ms. Boyd, thank you  
23 so much. If you will go back to the jury  
24 assembly room. I can go ahead and tell  
25 you, you are released for the rest of the

1 day.

2 PROSPECTIVE JUROR: I can go  
3 home?

4 THE COURT: Call the  
5 code-a-phone tonight, ma'am.

6 PROSPECTIVE JUROR: Thank you.

7 MR. POWELL: I noticed this  
8 when I was going over the jury panels but  
9 I forgot because we were striking the  
10 jury. My wife, Emily Rhodes, just took a  
11 job in the admissions office at  
12 Huntingdon where this juror works so she  
13 knows my wife, and Mr. Hartley may need  
14 to make a record about that.

15 MR. HARTLEY: Yeah, we need to  
16 get that on the record. Bring him on as  
17 soon as you can.

18 THE COURT: Okay. Mr. Joyce  
19 has rejoined us. I understand that Ms.  
20 Catching works at the admissions office  
21 in Huntingdon with Mr. Powell's wife.  
22 Mr. Hartley, you want to followup?

23 MR. HARTLEY: Yes, Judge. Ms.  
24 Catching, you now have -- we didn't  
25 realize it because I think she has a

1 different last name because the lady you  
2 work with and Mr. Powell but they are  
3 married.

4 PROSPECTIVE JUROR: Right.

5 MR. HARTLEY: At least you know  
6 about that last name. Have y'all become  
7 friends? Have you and his wife become  
8 friends at work? You know, get to know  
9 each other better and better?

10 PROSPECTIVE JUROR: Well, it is  
11 a small office but she has only been  
12 there two weeks or about two weeks. So I  
13 wouldn't say we were friends but we see  
14 each other every day.

15 MR. HARTLEY: Now that you know  
16 this information, would it be -- I just  
17 need to ask. Could your association with  
18 her in any way affect your verdict in  
19 this case since, you know, the sort of  
20 friendship with her might likewise be a  
21 friendship with Mr. Powell. I realize  
22 that you might say no but I am talking  
23 about in the scheme of things, could it  
24 affect your verdict in this case?

25 PROSPECTIVE JUROR: I don't

1 think so. Do I have to be absolutely  
2 sure? I wouldn't think so.

3 MR. HARTLEY: Well, I would  
4 like to ask it in the terms that I did  
5 when I focused on that question a while  
6 ago. What if it came down to a real,  
7 real close case on the issue of guilt or  
8 innocence, could it possibly affect your  
9 verdict? And if your answer to that is  
10 yes, please tell me. If the answer is  
11 no, tell us the best you can.

12 PROSPECTIVE JUROR: No.

13 MR. HARTLEY: The answer is  
14 no?

15 PROSPECTIVE JUROR: No.

16 MR. POWELL: No questions, Your  
17 Honor.

18 THE COURT: Ms. Catching, let  
19 me ask you something. Would you prefer  
20 not to be on this jury because you are in  
21 the same office with Mr. Powell's wife?

22 PROSPECTIVE JUROR: It makes me  
23 a little uncomfortable.

24 THE COURT: Okay.

25 MR. HARTLEY: Judge, I think if

1           it makes her uncomfortable, I think  
2           that's -- we have to move to make a  
3           motion to strike her. And really, we do  
4           respect her ability to serve.

5           THE COURT: I understand. I  
6           wouldn't want to be in her predicament  
7           either. I will grant your motion.

8           MR. HARTLEY: Thank you,  
9           Judge.

10           THE COURT: You are excused,  
11           ma'am, for the remainder of the day.  
12           Thank you.

13           (At which time the jury was  
14           struck, placed in the jury box, and the  
15           following proceedings were held in the  
16           presence and hearing of the jury.)

17           THE COURT: Before you sit  
18           down, just raise your right hand. I'm  
19           going to swear you in as the jurors.

20           (At which time the jury was  
21           duly sworn.)

22           THE COURT: Be seated.

23           Obviously, you know y'all have been  
24           selected as jurors in this case. The  
25           first official duty will be to go to

1           lunch. I mean that. I'm just going to  
2           let y'all go break for about an hour.

3           Before I let you go, let me  
4           just tell you some do's and don'ts,  
5           mostly don'ts, when you leave the jury  
6           box. Don't discuss this case with  
7           anybody. Don't let anybody discuss the  
8           case with you. Don't even discuss it  
9           with each other. The reason we say that  
10          is when you go back here in the jury room  
11          to decide the guilt or innocence, we want  
12          everybody to start at the same place.  
13          And if some of y'all have had discussions  
14          about the case with anybody for any  
15          reason, you are not all starting at the  
16          same place.

17           If you see me out in the  
18          hallway, I'm not going to talk to you.  
19          The attorneys, it's going to be the same  
20          way. It is not that we are being rude.  
21          We don't want there to be any contact.  
22          We don't want there to be any -- make it  
23          look like we are talking with you because  
24          we want you to decide the case based  
25          solely on what you hear in the witness

1 box and the evidence in the case.

2 So don't talk to anybody about  
3 the case. Don't let anybody talk to  
4 you. I will talk to you more when we  
5 break for the day about newspapers and  
6 that sort of thing. You know, don't go  
7 get in your car and drive down to Smiley  
8 Court and try to look at the scene of  
9 where the shooting took place. Don't get  
10 on the internet and try to look up any  
11 legal terms or call your buddy who is a  
12 lawyer or something like that and start  
13 asking him technical, legal issues in the  
14 case. Again, we want you to decide the  
15 case solely on what you hear in this  
16 courtroom. And if you are trying to do  
17 any of that on your own, it means that  
18 you are letting an outside influence come  
19 in. We want you to be influenced only on  
20 what you hear in this courtroom.

21 Having said all that, if y'all  
22 will be back here at 1:45, we will get  
23 started. Just for planning purposes, we  
24 will probably go today to about 4:30 in  
25 the afternoon. If we get to a natural

1 break right around then, that's when  
2 we'll try to break. We'll try -- I will  
3 let you know when we get back what time  
4 we'll start back in the morning. I am  
5 sitting here right now. I don't know  
6 what my schedule is in the morning, but  
7 hopefully we'll be able to start back  
8 around 8:30 or 9:00 in the morning. If  
9 you will just return to the jury assembly  
10 room, we'll come get you at 1:45. Please  
11 be prompt.

12 (Lunch Recess.)

13 (The following proceedings were  
14 held outside the presence and hearing of  
15 the jury.)

16 THE COURT: We are on lunch  
17 break and a juror has come in and said he  
18 needs to speak. Mr. Joyce isn't here.  
19 We are just trying to find out right now,  
20 with the consent of his attorney, what  
21 the nature of the request is.

22 JUROR: It was brought to my  
23 attention as I was leaving the courtroom  
24 that the defendant's mother and I worked  
25 at the same place a few years ago back in

1           the latter part of 1999 when I was  
2         employed by the U.S. Postal office. Now,  
3         I don't know how that will have any  
4         bearing on the case or not, sir, but we  
5         were not, as you would say, close or  
6         anything like that. I just knew her from  
7         seeing her at work.

8           THE COURT: Okay.

9           JUROR: That's about the basis  
10         of it.

11           THE COURT: Why don't we -- we  
12         will wait until Mr. Joyce gets here and  
13         we'll take that up. Are you going to be  
14         in the jury assembly room anyway?

15           JUROR: Yes, sir. That's where  
16         I was headed back to now.

17           THE COURT: Okay. We'll just  
18         come and get you and talk about it when  
19         you get back. Thank you for letting us  
20         know that.

21           JUROR: Thank you, sir.

22           THE COURT: Thank you, sir.

23           (Brief Recess.)

24           THE COURT: Before we get the  
25         jury back in here -- where did Will go?

1           We had a juror come in and say that he  
2           knew Mr. Joyce's momma when he worked at  
3           the post office. The record will speak  
4           for what he actually said, but does  
5           anybody have anything to say about it at  
6           this time?

7                   MR. POWELL: Judge, I wouldn't  
8           -- I was going to ask a couple follow-up  
9           questions. I don't think I have a  
10          problem with it but I just wanted to -- I  
11          thought the way you addressed it before  
12          made it sound like you wanted to wait  
13          until the defendant was here before we  
14          probed into it.

15                  THE COURT: Yes. I didn't know  
16          you wanted to probe. If you want to  
17          probe --

18                  MR. POWELL: Just briefly. I  
19          don't think I'm going to have a problem  
20          with it, but the indication he gave us  
21          earlier was they just had brief contact  
22          and he knew who she was and it took him a  
23          little while to realize she was that same  
24          person he worked with in '99 or '96,  
25          whenever it was. But I just want to make

1           sure -- if that's the extent of it, I  
2           don't have any problem. I just need to  
3           put that on the record.

4           THE COURT: Let me also say for  
5           the benefit of those people here in the  
6           courtroom that I understand there has  
7           been some jawing back and forth between  
8           the families. I am not going to tolerate  
9           it. We are going to run this trial  
10           smoothly. We are going to get through  
11           this thing without any fights breaking  
12           out.

13           If anybody has a problem with  
14           that, they need to leave now because I  
15           won't hesitate to hold somebody in  
16           contempt of Court if they start causing  
17           an uproar or commotion in this courtroom  
18           or out in the hallway.

19           (At which time the juror  
20           returns to the courtroom.)

21           THE COURT: I think some of the  
22           lawyers may want to ask you a few  
23           questions. We just wanted to wait until  
24           we had everybody here.

25           MR. POWELL: More specifically,

1 where did you know Ms. Joyce from, the  
2 defendant's mother?

3 JUROR: At the postal service.

4 MR. POWELL: How long had you  
5 been working there?

6 JUROR: I started with the  
7 postal service in '89. I started out in  
8 the general facility in 1991.

9 MR. POWELL: What was your job  
10 there at the time?

11 JUROR: I was a mail handler.

12 MR. POWELL: You were a mail  
13 handler at the time. What was her job?

14 JUROR: I think she might have  
15 been a clerk or something of that  
16 magnitude.

17 MR. POWELL: And how often did  
18 y'all see each other or come into contact  
19 with each other?

20 JUROR: No more than clocking  
21 in and clocking out. Just see each other  
22 in the hallway and things such as that.

23 MR. POWELL: And y'all didn't  
24 know each other like didn't see each  
25 other at a barbecue or at church or

1 anything like that?

2 JUROR: Nothing. Just work.

3 MR. POWELL: Just from work  
4 strictly?

5 JUROR: That was it.

6 MR. POWELL: Did y'all have  
7 lunch breaks or anything? Were y'all in  
8 the same work room or anything like  
9 that?

10 JUROR: No.

11 MR. POWELL: Would the fact  
12 that you know Ms. Joyce influence you in  
13 favor of her son or make you feel awkward  
14 about sitting on this jury or anything  
15 like that?

16 JUROR: Well, it is -- actually  
17 the evidence itself would make my  
18 decision for me.

19 MR. POWELL: Do you still work  
20 with Ms. Joyce?

21 JUROR: No. I'm with the State  
22 of Alabama at this time.

23 MR. POWELL: You have a  
24 different job now?

25 JUROR: Yes.

1                           MR. POWELL: And I'll ask you:  
2     How did you come to realize -- put the  
3     pieces together that this lady was the  
4     same one you might have worked with  
5     earlier?

6                           JUROR: Well, as I said, when I  
7     was going to lunch, I -- we spoke to one  
8     another and I remembered her from being  
9     at the postal service and she reminded me  
10    -- she mentioned to me the fact that  
11    that was her son that was on trial at the  
12    time.

13                          MR. POWELL: Ms. Joyce actually  
14    addressed that to you?

15                          JUROR: Yes.

16                          MR. POWELL: Did she approach  
17    you or did you approach her?

18                          JUROR: No. We just spoke to  
19    one another as we were leaving the  
20    courthouse grounds.

21                          MR. POWELL: And she mentioned  
22    that that was her son?

23                          JUROR: Right.

24                          MR. POWELL: And that's how you  
25    became aware of it?

1                   JUROR: Right.

2                   MR. POWELL: Until that point,  
3                   you didn't have any independent  
4                   recollection of it?

5                   JUROR: None whatsoever.

6                   MR. POWELL: Nothing further,  
7                   Judge.

8                   THE COURT: Thank you, sir.  
9                   Just go back in the jury assembly room.

10                  MR. POWELL: Judge, the state  
11                  doesn't have a problem with that juror.

12                  THE COURT: Okay.

13                  MR. POWELL: We would ask for  
14                  an instruction.

15                  THE COURT: Yes. Ms. Joyce,  
16                  you are not to talk to any jurors, make  
17                  eye contact with them. That goes for  
18                  anybody in this courtroom. Nobody is to  
19                  talk to a juror in this courtroom. You  
20                  are not to speak to them in the hallways,  
21                  out on the street. I don't want anybody  
22                  making eye contact. You don't wave. You  
23                  don't acknowledge that you even know them  
24                  or you don't acknowledge that you see  
25                  them.

1                   We were going to have a fair  
2 trial in this case. If anybody has a  
3 problem with that, let me know now.

4                   Richard, will you tell Jason to  
5 go ahead and bring the jury back. I  
6 assume nobody has a problem with the  
7 issue about the jury?

8                   MR. HARTLEY: No, Your Honor.

9                   (Brief Recess.)

10                  (At which time the jury enters  
11 the courtroom.)

12                  THE COURT: Be seated  
13 everybody. Before we get started, ladies  
14 and gentlemen of the jury, let me just  
15 sort of tell you a little bit about what  
16 we are going to be doing this afternoon.  
17 I will explain everybody's role in this  
18 trial to you. Let me start with my own  
19 role.

20                  I sort of see my role as like a  
21 referee in a football game. I don't have  
22 a dog in the fight. I don't really know  
23 a whole lot more about the case than  
24 y'all do at this point. My job is to  
25 make sure it is a fair trial for

1 everybody. My job is when someone makes  
2 an objection, I will rule on whether the  
3 objection is well-founded or not.

4 Please, when you are sitting over there,  
5 don't worry about why the judge did what  
6 he did. Don't sit there and worry about,  
7 well, if that evidence had come in, what  
8 would the witness have said or -- because  
9 that gets into the realm of speculation.  
10 We want you to decide the case based on  
11 what you hear from the witness stand.

12 At the end of the case, I will  
13 tell you what the law in Alabama is that  
14 governs this case. What is your role?  
15 Your role is to sit and listen to the  
16 evidence, and you hear the testimony of  
17 the witnesses. You look at the exhibits  
18 that we might let into evidence. From  
19 that, you determine what the true facts  
20 are in the case. Then you take those  
21 facts and the law of the case as I give  
22 it to you and you reach a verdict in the  
23 case.

24 Here is how we are going to  
25 proceed in this case. Each party will

1 get up and give an opening statement.  
2 The prosecution goes first because they  
3 have the burden of proof in the case.  
4 They will tell you what they think the  
5 evidence in the case will show. The  
6 defense attorney, Wiley Hartley, he will  
7 do the same.

8 After the opening statements,  
9 the state will begin presenting its  
10 case. When the state rests its case, the  
11 defense will put on their case. And  
12 following the presentation of the  
13 evidence, the lawyers will be able to  
14 give what is known as closing arguments  
15 and that's where they try to sum up the  
16 evidence and persuade you that you should  
17 either acquit or convict in this case.

18 Again, the state goes first in  
19 the closing arguments and they get a  
20 little rebuttal. Again, that's because  
21 they have the burden of proof in the  
22 case. After they finish their arguments,  
23 I will tell you again what the law is in  
24 this case.

25 I have talked a lot about

1           evidence. So let me go over with you  
2 what is evidence in the case and, again,  
3 by telling you really what is not  
4 evidence. Anything I say in this case is  
5 not evidence. Anything the lawyers say  
6 in this case is not evidence. Evidence  
7 is what you hear from this witness stand  
8 by people who are under oath. It is also  
9 any exhibits that we'll allow into  
10 evidence. It is also any presumptions of  
11 law in the case. I will tell you right  
12 now that a presumption of law in this  
13 case is that the defendant is presumed  
14 innocent and that presumption stays with  
15 the defendant until you reach your  
16 verdict, and that is considered as  
17 evidence in the case.

18           As I told you this morning,  
19 we'll be trying to take breaks every  
20 forty-five minutes to an hour. If you  
21 need a break before that, just raise your  
22 hand and let me know -- or Judy Shelton  
23 is my court reporter, or one of the  
24 deputies. Just let us know. We'll try  
25 to work with you any way that we can.

1                   As I also said, we'll probably  
2                   be trying to take a break about 4:30 this  
3                   afternoon and come back in the morning.  
4                   Again, just listen to the evidence.  
5                   Don't discuss the case with anybody.  
6                   Don't let anybody discuss the case with  
7                   you. Okay? We'll get started.

8                   MR. POWELL: May it please the  
9                   Court, counsel. Members of the jury,  
10                  back on Friday night, February 1st of  
11                  last year, right around 11:00, two men  
12                  were at a party over at Smiley Court.  
13                  They had been having words with each  
14                  other all night long until finally they  
15                  ended up between two of the apartments.  
16                  And after just some more words passed, no  
17                  fighting, nothing but words, this  
18                  defendant pulls out a handgun and shoots  
19                  at least three times striking James  
20                  Friendly in the side, in the leg, and in  
21                  the rear end. He eventually died from  
22                  those gunshot wounds.

23                  That's what we are here about  
24                  today. The defendant is charged with  
25                  murder in the State of Alabama. Again,

1 my name is Will Powell and along with my  
2 co-counsel, Ms. Vernetta Perkins, we are  
3 representing not only the State of  
4 Alabama here in this courtroom here today  
5 but also James Friendly. James didn't  
6 just go by James. He also had another  
7 name. You are going to hear a lot of  
8 people refer to him as Boo, B-O-O. If  
9 you hear somebody refer to somebody named  
10 Boo, they are talking about the victim,  
11 James Friendly.

12 Sitting here with us is his  
13 momma, Ms. Sally Friendly. Now, the  
14 Friendlys don't live in Smiley Court  
15 where this happened. They live over off  
16 the Boulevard, over off Fleming Road.  
17 James just ended up in Smiley Court  
18 because he knew somebody who knew  
19 somebody who was at the party. Then he  
20 comes across the defendant in this case.

21 Who was he? What are you going  
22 to learn about the defendant? You are  
23 going to learn that the defendant was at  
24 this party and he shot a man to death  
25 over nothing but a meaningless argument.

1 Now, in his mind, the argument might have  
2 had some meaning, but I think the  
3 evidence is going to be that it wasn't  
4 threats. It wasn't pushing or shoving.  
5 It was just an argument over who was  
6 better or badder than who, and he decided  
7 he would win the argument by making the  
8 decision to pull out a gun and fire it,  
9 not once, not twice, but at least three  
10 times striking the victim, striking James  
11 Friendly and killing him dead.

12 Now, before we go any further,  
13 let's talk for a minute about the crime  
14 of murder in the State of Alabama.  
15 Specifically, the defendant is charged  
16 with the crime of intentional murder.  
17 Now, when you hear intentional murder, a  
18 lot of people think, well, some planned  
19 out elaborate scheme where someone makes  
20 a decision in advance and does all these  
21 things leading up to it. That is very  
22 easily a manner of intentional murder.

23 But in the State of Alabama,  
24 all the state is required to prove the  
25 crime of intentional murder is that the

1 defendant made up his mind to kill the  
2 victim. That's it. We don't have to  
3 prove some elaborate, well thought out  
4 scheme. That's one way we could prove  
5 it. But all we have to prove is that he  
6 made the decision, a clear decision to  
7 reach into his waist band -- first off,  
8 it started before that, to arm himself  
9 that night, to go to this party with a  
10 gun. Then over words, over just an  
11 argument, he made the decision to go for  
12 that gun, to pull it up, to point it and  
13 pull the trigger not one time, not two  
14 times, but at least three, if not more  
15 times.

16 We are going to submit to you,  
17 members of the jury, that when you have  
18 heard all the state's evidence in this  
19 case, that act alone of making that  
20 decision, even if it was, so to speak,  
21 spur of the moment is enough to  
22 constitute intentional murder in the  
23 State of Alabama.

24 The focus is that the decision  
25 was made, the intent was formed out there

1           between those two buildings that night to  
2           pull that gun and to use it, and it ended  
3           a man's life.

4                 Now, what are you going to hear  
5           about? What is going to be the evidence  
6           that is presented to you in this  
7           courtroom this afternoon and tomorrow?

8                 First, you are going to learn this was a  
9           birthday party. An individual by the  
10          name of Christopher McQueen or Flip had  
11          just had a birthday and they were having  
12          a party for him over at Nicole Judkins'  
13          house. They didn't really see much and  
14          they didn't know a whole lot about what  
15          was going on. That's just where the  
16          people were gathering over in Smiley  
17          Court that night.

18                 The defendant arrived in a blue  
19          pickup truck. He arrived with an  
20          individual named Antwan Giles. They get  
21          to the party and they start milling  
22          around. They go into the apartment where  
23          the party is. There are other apartments  
24          close by. They are going across the  
25          street.

1                   Well, in the meantime, the  
2 victim is there, Boo, and other people  
3 are there. They are mingling and having  
4 a big time until finally the two men's  
5 paths cross because of a very key  
6 individual in this trial. His name is  
7 Eric Stewart, also known as Rabbit.

8                   Rabbit was hanging out with Boo  
9 and they see James Friendly. I think  
10 Rabbit is even going to testify that he  
11 and Boo were trying to figure out a way  
12 they could find some cocaine and get  
13 high. I think they will tell you that  
14 this was a party. They had been drinking  
15 and they were looking for some cocaine.

16                  And while they were in this  
17 process, they kept bumping into the  
18 defendant and they kept having words with  
19 each other. They weren't arguing over  
20 the cocaine. They were just arguing over  
21 I could do this to you, you could do that  
22 to me. Over nothing is what it amounts  
23 to. Kind of a bad, bad Leroy kind of an  
24 argument and it just went on.

25                  Finally, Mr. Stewart was like,

1           look, look, it don't have to go like  
2           this. Let's just have another drink and  
3           just let this go, and it died down. So  
4           he goes in the house, in the apartment.  
5           Comes back out with a drink. He and Boo  
6           are standing there. They decide they are  
7           going to go around the side and drink the  
8           beer or do the cocaine or whatever.

9                 Only the defendant is there and  
10          the argument starts again. Eric Stewart  
11          is right there. He is right there in the  
12          middle of it. There is a witness  
13          standing from me to y'all about what is  
14          going on.

15                 Now, let me just say this about  
16          Mr. Stewart. You may not like him. He  
17          is not a -- this is not a popularity  
18          contest, and he will be the first to tell  
19          you he has picked up drug charges being  
20          they were out trying to do cocaine that  
21          night. We are dealing with people at  
22          this party that have a history, but these  
23          are just the cards that have been dealt.  
24          That's who was standing there when the  
25          shooting occurred. So just keep that in

1                   mind as you are listening to Mr. Stewart  
2                   or Rabbit's testimony. We are not asking  
3                   you to like him. We are asking you to  
4                   listen to him and evaluate his testimony  
5                   with all of the other testimony in the  
6                   case to determine whether or not this  
7                   defendant committed this murder.

8                   Now, Mr. Stewart, Rabbit, is  
9                   going to tell you, as the argument  
10                  continued, the defendant, who he was  
11                  standing right there, just pulls out a  
12                  gun and ends it. Ends the argument by  
13                  shooting, pow, pow, pow, pow. Bullets  
14                  not only hit Mr. Friendly, but they also  
15                  hit a red Jeep Cherokee that is backed  
16                  into a parking place.

17                  Like this is the parking lot  
18                  and there is an apartment building there  
19                  where the party is there and there is  
20                  another apartment building there. That  
21                  Jeep is just backed right there with the  
22                  back of that Jeep facing the area where  
23                  these men are standing. Other people are  
24                  milling around. But it was Joyce and it  
25                  was Friendly that were having an

1 argument, and Stewart was standing right  
2 there.

3 Now when that bullet hit that  
4 Jeep, there were two other people in that  
5 Jeep. One's name is Johnny Osborne and  
6 the other one's name was Brian Osborne.  
7 They had been at that party. I think the  
8 Osbornes will tell you they were sitting  
9 there getting ready to roll a joint when  
10 something hits their Jeep that they are  
11 sitting in. So Johnny Osborne gets down  
12 but Brian Osborne almost sticks his head  
13 out the window to look back to see what  
14 -- who is getting hit or where the shots  
15 are coming from.

16 He looks back. We think the  
17 evidence is going to be he is going to  
18 tell you he saw that man right there  
19 shooting James Friendly. He saw the  
20 defendant shooting Boo. Saw the fire  
21 from the gun. So that's two eye  
22 witnesses.

23 Now the police get there and  
24 there is not a whole lot of a crime  
25 scene. Basically, you got a grassy area

1           in between two parking lots. They took  
2           some pictures of it but they are not that  
3           great of pictures, but you get to see  
4           them. They also picked up three shell  
5           casings from the grounds. And the body  
6           -- they did an autopsy on it. There  
7           were three injuries to the body.

8           Now maybe some other shots were  
9           fired. Some people say they heard four  
10          or five shots but the police only found  
11          three shell casings. The department and  
12          ballistics experts looked at them, people  
13          that worked all their lives with them.  
14          The three shell casings match each  
15          other.

16           That's all they can tell you  
17          about those shell casings. But that's  
18          important because it does mean there was  
19          one gun that left physical evidence at  
20          that crime scene, not two guns, not three  
21          guns, but one single gun. We submit to  
22          you it was the defendant's gun. There  
23          were nine millimeter shell casings that  
24          were picked up, that ballistics indicate  
25          most likely came from a Hot Point, a name

1           of a gun, a type firearm or handgun. The  
2        slug that was taken, one of the bullets  
3        that went through his chest or his  
4        abdomen and then another bullet went  
5        through his lower -- a little lower down,  
6        and that's the bullet they were able to  
7        recover. We think the medical evidence  
8        is going to be -- those gunshot wounds  
9        inflicted by the defendant killed James  
10      Friendly.

11           That's in addition to having a  
12      medical examiner. You can also use your  
13      common sense. Someone shot three times,  
14      twice across the gut. There is a good  
15      chance that's what killed him, and it  
16      was. So that's going to be the state's  
17      case.

18           You have got eye witness  
19      testimony. That eye witness testimony  
20      all points to one person, the defendant.  
21      You have got that eye witness testimony  
22      corroborated by physical evidence, shell  
23      casings from one gun, the autopsy  
24      report. All of this evidence, when taken  
25      as a whole, tells the exact same story.

1 It tells the story of Darryl Joyce  
2 pulling a gun, pointing it at James  
3 Friendly and deciding to intentionally  
4 pull that trigger at least three times  
5 killing him dead.

6 Now we feel confident that  
7 after you have seen the physical  
8 evidence, seen the photographs, heard  
9 from the eye witnesses, we feel confident  
10 that you are going to return a verdict of  
11 guilty, that this man sitting in front of  
12 you today shot James Friendly in that  
13 grassy area between those two apartments  
14 over nothing, over nothing, or at least  
15 not anything somebody should die for.  
16 Thank you.

17 THE COURT: Mr. Hartley.

18 MR. HARTLEY: Yes, sir. Judge,  
19 counsel, good afternoon members of the  
20 jury. I'm John Hartley and I have been  
21 practicing here for a lot of years in  
22 Montgomery. I do these kinds of cases as  
23 part of my professional career, I guess  
24 you would say. I'm representing Darryl  
25 Joyce and will assist in putting on his

1 defense today.

2 Mr. Powell and I have tried a  
3 few cases against each other and we know  
4 each other real well. We just see a  
5 different perspective on this case, with  
6 due respect to him, and I think he  
7 understands that there is a difference --  
8 there is a difference, two sides to this  
9 story. There is more to this than what  
10 was told to you. I want to just say that  
11 the judge emphatically told you about the  
12 presumption of innocence and how it rises  
13 to the level of evidence in this case.

14 You have also been told in  
15 either the form of questions or directly  
16 that the state has got the burden of  
17 proof and they have got to prove my  
18 client guilty beyond a reasonable doubt.  
19 I submit to you they will not be able  
20 to. I will not make a lengthy opening  
21 statement. I think a lot of this case  
22 will come out in cross-examination.

23 But there is going to be some  
24 stuff that Mr. Powell didn't tell you  
25 about. I will get to a few particulars

1           in just a moment. First of all, I want  
2           to emphasize to you, and this has already  
3           been -- you are going to have to take it  
4           -- kind of what the circumstances were  
5           on that night as to how good this eye  
6           witness's testimony that Mr. Powell talks  
7           about is going to be in this case.

8           I think they are going to show  
9           you some slides that portray the scene.  
10          They were taken in the daytime. This all  
11          happened at night in the middle dark part  
12          of the apartments, late enough where  
13          there would be no natural lighting. This  
14          didn't happen in the daytime. It  
15          happened close to midnight on February 1,  
16          2002. There were a number of people out  
17          there. This was an ongoing birthday  
18          party as Mr. Powell mentioned to you.  
19          But I think it is going to come across --  
20          you know, a broad view of the testimony  
21          and the evidence in this case is that the  
22          people that are implicating my client are  
23          actually -- I'm going to say friends --  
24          they are actually covering for another  
25          individual. They are covering for Darryl

1 Foggy who we submit to you is going to be  
2 the real or the specific person who shot  
3 James Friendly, if anyone can be  
4 identified. It was Darryl Foggy who was  
5 physically present out there and whose  
6 name comes up several times during this  
7 case.

8                   The illogical part for Mr.  
9 Powell is that my client didn't have any  
10 beef with James Friendly. If he didn't  
11 know the man, he didn't have any reason  
12 to be out there arguing with him and  
13 fighting with him.

14                   Now what happened between  
15 Darryl Foggy and James Friendly is beyond  
16 us. Some of it may come out during this  
17 case but it is something that -- there  
18 was no way to go back and reconstruct  
19 exactly what happened that night. We can  
20 only go through the testimony and see  
21 what can be pieced together about it.  
22 But we are going to find that there is a  
23 loyalty or sort of a tightness between  
24 Eric Stewart, Darryl Foggy and possibly a  
25 man named Brian Osborne. And we are

1 going to submit to you that they are  
2 trying to put this on Darryl Joyce  
3 because he wasn't one of their little  
4 tight-knit group, their clique, whatever  
5 you want to call it. He really didn't  
6 even know the man. I think he came there  
7 with Antwan Giles.

8 As Mr. Powell has said, there  
9 was a pretty big function and some people  
10 just came there. They heard about it or  
11 there was something going on and it just  
12 drew a crowd. But the most remarkable  
13 thing you are going to find in this case  
14 is that there is eye witness testimony.  
15 Then there is a witness who was  
16 identified by Bryant Thomas, and on the  
17 -- when he was identified by the police  
18 -- I mean when Bryant Thomas was  
19 interviewed by the police, when he was  
20 first asked who it was, he was shown a  
21 photo lineup and identified Darryl Foggy  
22 as being the shooter. That's reflected  
23 in Mr. E.E. Howton's report that he made  
24 in the police files. Whether or not he  
25 sticks to that story now, we don't know

1           but he did that night. He first said  
2           it.

3           That's the first he -- and he  
4           was looking at a photo array, a lineup of  
5           people -- they have what they call a  
6           photo lineup and he specifically  
7           identified Darryl Foggy as the person who  
8           shot him. The story gets even more  
9           convoluted involving Darryl Foggy that  
10           night. Eric Stewart was the witness that  
11           Mr. Powell described as being so close.

12           Now, his motive for this, we  
13           will have to figure it out as we go  
14           along. But he took Darryl Foggy's gun  
15           away from the scene and hid it in an  
16           apartment not far away. And since that  
17           time, I think the same detective may have  
18           led through this part of the  
19           investigation. They went -- the  
20           information became available and they  
21           went to that apartment, found the gun and  
22           recovered it. It is going to be in  
23           evidence in this case.

24           What is important about that?  
25           Eric Stewart was in the police station

1           that morning giving statements. He gave  
2           one about -- I'm just going to say about  
3           3:00 that morning and another one about  
4           7:00 in the morning. He gave kind of a  
5           statement to the police about what had  
6           happened the night before trying to  
7           implicate Darryl Joyce, but he never told  
8           the police that morning that he was  
9           hiding a gun or had hid a gun for Darryl  
10          Foggy. But the report reflects after he  
11          gave these two statements when they were  
12          a couple hours apart, they kind of  
13          overlap, I guess, in some of the  
14          details. But nowhere in those statements  
15          where he was talking to the police did he  
16          disclose that he had hidden a gun in the  
17          last couple of hours. But it says in  
18          there that at 8:00 he starts telling them  
19          about where a gun had been.

20           I bring that to your attention  
21          because -- to tell you that the evidence  
22          is going to show that Eric Stewart is  
23          very loyal to Darryl Foggy if he would go  
24          hide a gun right after an incident like  
25          this took place. So this is where the

1 evidence is going to become unclear. And  
2 Mr. Powell said -- he said it was going  
3 to be so clear that at the end of the  
4 state's evidence, the finger is going to  
5 be pointed at Darryl Joyce.

6 Well, I ask the question why  
7 don't we have a photo lineup that shows  
8 Darryl Joyce. I submit to you if I had  
9 looked at this record closely, there's  
10 nowhere where anybody correctly  
11 identified Darryl Joyce from a photo  
12 lineup or specifically picked him out as  
13 being the one. So we go back now to who  
14 is really telling the truth and what the  
15 deal on this is. It is going to leave  
16 some doubt. We will submit to you there  
17 is going to be reasonable doubt and the  
18 state cannot prove beyond a reasonable  
19 doubt Darryl Joyce's guilt. Mr. Powell  
20 has made the statements Darryl Joyce did  
21 this and Darryl Joyce did that. He  
22 doesn't know. He wasn't out there. He  
23 is just relating to you what he hopes he  
24 can prove. Then you will have to take  
25 into your own concept of this case the

1 overall circumstances.

2 It was dark, nothing but  
3 artificial lighting. A lot of people  
4 were drinking and on drugs and then the  
5 issue of who would taint or slant their  
6 testimony. When all that is blended  
7 together, I submit to you we may never  
8 solve in this courtroom today or tomorrow  
9 who shot Mr. James Friendly. Thank you.

10 THE COURT: Call your first  
11 witness.

12 MR. POWELL: The state calls  
13 Eric Stewart.

14 ERIC STEWART,  
15 having been first duly sworn, was  
16 examined and testified as follows:

17 DIRECT EXAMINATION

18 BY MR. POWELL:

19 Q. Mr. Stewart, if you would scoot  
20 up for me. Speak into this microphone so  
21 all the jury can hear you. All right.  
22 First off, state your name for the  
23 record.

24 A. Eric Stewart.

25 Q. Mr. Stewart, do you have a

1 street name or something you go by other  
2 than Eric Stewart?

3 A. Yes.

4 Q. What is that?

5 A. Rabbit.

6 THE COURT: So most people that  
7 see you, what are they going to call  
8 you?

9 THE WITNESS: Rabbit.

10 Q. Where do you live?

11 A. 403-A Marlyn Street.

12 Q. Marlyn Street?

13 A. Yes.

14 Q. And where is that area here in  
15 Montgomery?

16 A. That's the Smiley Court area.

17 Q. You live over in Smiley Court?

18 A. Yes.

19 Q. Now, do you currently have a  
20 job?

21 A. No, sir.

22 Q. Have you had a job in the past?

23 A. Yes.

24 Q. What kind of things have you  
25 done in the past?

1 A. Detailing cars.

2 Q. Detailing cars and that kind of  
3 stuff?

4 A. Yes, sir.

5 Q. All right. Now, bring your  
6 attention back to February the 1st of  
7 last year. Do you recall that date?

8 A. Yes, sir.

9 Q. Do you recall a party that was  
10 going on that night?

11 A. Yes, sir.

12 Q. Whose party was it?

13 A. My cousin, Chris McQueen.

14 Q. Christopher McQueen is your  
15 cousin?

16 A. Yes.

17 Q. What does he go by usually?

18 A. Flip.

19 Q. Where was the party being held?

20 A. At 432 Marlyn Street.

21 Q. Who lives there, if you know?

22 A. My cousin and his girlfriend  
23 Nicole.

24 Q. Nicole?

25 A. Yeah.

1 Q. What is her last name?

2 A. I'm not sure. Johnson or  
3 something like that.

4 Q. But you are having a party for  
5 your cousin Flip over at Nicole's house?

6 A. Yes.

7 Q. How did you learn about this  
8 party?

9 A. My cousin told me.

10 Q. And were you invited basically?

11 A. Yes.

12 Q. What time did you go over to  
13 the party?

14 A. Came about 9:30, 10:00.

15 Q. How many folks were there once  
16 you got there?

17 A. About thirty.

18 Q. About thirty people?

19 A. Yes.

20 Q. And how would you -- describe  
21 the apartment for us. What did it look  
22 like over there in Smiley Court?

23 Describe the apartment where they were  
24 having the party.

25 A. Oh, the apartment. Like I

1           said, it was like a lot of people against  
2           the walls. There were no chairs -- a  
3           couple chairs there.

4           Q. Did they have drinks or food or  
5           anything like that?

6           A. They had food.

7           Q. What?

8           A. We had beer, liquor like.

9           Q. Inside the apartment?

10          A. Yes. Inside.

11          Q. So if you wanted a drink you  
12         would have to go inside?

13          A. Yes.

14          Q. And there were people inside?

15          A. Yes.

16          Q. Music, I take it?

17          A. Yeah. There were some music.

18          Q. Smoking and that kind of stuff?

19          A. Yes.

20          Q. Just your basic party?

21          A. Yes, sir.

22          Q. And were there people also  
23         outside?

24          A. Yes, sir.

25          Q. What was it like outside that

1 night?

2 A. Like people standing on the  
3 porch. People like in the yard by the  
4 mail box and stuff. People walking past.

5 Q. Were there any street lights or  
6 porch lights or anything like that?

7 A. Yes. She had a porch light on.

8 Q. A porch light?

9 A. Yeah.

10 Q. Now what was between the two  
11 apartment complexes? Were there any  
12 lights or --

13 A. No, sir, no lights.

14 Q. Could you see?

15 A. Yes, you could see.

16 Q. Do you remember what the  
17 weather was like that night?

18 A. It was cold. It was cold.

19 Q. It was cold being back in  
20 February?

21 A. Yes.

22 Q. Do you remember whether the  
23 moon was out?

24 A. No, sir.

25 Q. If I am where I am and you were

1           where you are, would you be able to see  
2           me out in between those two apartments?

3           A.     Yes, sir.

4           Q.     So you could see some things?

5           A.     Yes.

6           Q.     Now do you know the defendant  
7           in this case?

8           A.     Yes.

9           Q.     How do you know him?

10          A.     We went to Turner School  
11          downstairs together.

12          Q.     What about James Friendly, do  
13          you know him?

14          A.     Yes.

15          Q.     How?

16          A.     His girl stay upstairs from me.

17          Q.     So you are familiar with him  
18          and you knew a lot of other people at  
19          this party?

20          A.     Yes, sir.

21          Q.     Did you know someone there  
22          -- the defense has made a reference to  
23          Darryl Foggy.

24          A.     Yes.

25          Q.     How did you know him?

1 A. I growed up with Darryl Foggy.

2 Q. Did you see him at the party  
3 that night?

4 A. Yes, he was.

5 Q. Now, when was the first time  
6 you saw James Friendly that night?

7 A. When I came outside from the  
8 party, he was standing on the porch.

9 Q. How long had you been there?

10 A. Been there like an hour or so.

11 Q. Had you had anything to eat or  
12 drink?

13 A. Yes, I had something to drink.

14 Q. What?

15 A. A couple beers and a shot of  
16 liquor.

17 Q. So is it safe to say you had  
18 about three drinks at that point?

19 A. Yes.

20 Q. Give or take about?

21 A. Yes.

22 Q. So you walked outside and  
23 that's the first time you saw James  
24 Friendly?

25 A. Yeah.

1 Q. Where was he?

2 A. Standing on the porch.

3 Q. Now when you saw James on the  
4 street, what would you call him?

5 A. Boo.

6 Q. That was his name?

7 A. Uh-huh (indicating yes).

8 Q. And you are Rabbit. Now we got  
9 a Rabbit and a Boo out in front of the  
10 apartment?

11 A. Yes, sir.

12 Q. And that's the first time you  
13 had seen him that day?

14 A. Yes, sir.

15 Q. Do you have any idea how Boo  
16 got to the party?

17 A. No, sir.

18 Q. What did you do once you saw  
19 Mr. Friendly?

20 A. We shook hands. He said he  
21 just got out of jail. We were in the  
22 city jail together.

23 Q. That's the last time you saw  
24 him?

25 A. Yes, sir.

1                   Q.     And that's the first time y'all  
2     had seen each other since y'all got out  
3     of the city jail?

4                   A.     Yes.

5                   Q.     What have you been locked up  
6     for?

7                   A.     I was in the city jail for  
8     domestic violence.

9                   Q.     You got into a fight with your  
10    girlfriend?

11                  A.     Yes, sir.

12                  Q.     Have you ever been locked up on  
13    any --

14                  A.     I went to prison for possession  
15    of cocaine.

16                  Q.     Cocaine possession?

17                  A.     Yes, sir.

18                  Q.     Anything else?

19                  A.     No, sir.

20                  Q.     And other than the time y'all  
21    spent over at the city jail, did you know  
22    James Friendly before that?

23                  A.     Yes.

24                  Q.     How?

25                  A.     Like I said, his girlfriend was

1           staying upstairs. He would hang out with  
2           my brother a lot. Me and him met and we  
3           would hang out.

4           Q. Now what happened after you  
5           hooked up with James at the party?

6           A. He asked me do I want to go get  
7           high, and I said yes. And we went and  
8           got something.

9           Q. When you say you got something,  
10          what are you talking about?

11          A. A pile of cocaine.

12          Q. Now what happened after you got  
13          that?

14          A. We got the pile of cocaine from  
15          a guy and we went on the side of the  
16          building to do it. He had gave it to me  
17          first. He said, no, let me see it. He  
18          takes it. It would be some cocaine.

19          Q. How much did you take, if you  
20          know?

21          A. Just the taste. It wasn't like  
22          a pile on your hand.

23           THE COURT: Are you talking  
24          about you snorted a little of it or  
25          what?

1 A. No. He tasted it.

2 Q. Just touched it to his tongue?

3 A. Yeah.

4 Q. How much did y'all buy or did  
5 you get?

6 A. Spent fifty dollars.

7 Q. Fifty dollars worth of cocaine?

8 A. Yes.

9 Q. If you were holding it in your  
10 hand, how much would it have been?

11 A. It would be a lot. It would be  
12 like -- well, it would be a baggy like  
13 this here.

14 Q. A little corner of a bag?

15 A. Yeah. It filled it up.

16 Q. And y'all were over there on  
17 the side of the building?

18 A. Yeah.

19 Q. Then what happened?

20 A. He passed it to me.

21 Q. Then what did you do?

22 A. I snorted it.

23 Q. How much?

24 A. Like what you call a  
25 two-on-two.

1 Q. What does that mean?

2 A. Both nostrils, yes.

3 Q. Now what happened after y'all  
4 were around there on the other side of  
5 the building?

6 A. Well, I be around there.

7 Poncho came on the side when we were  
8 there.

9 Q. Now when you say Poncho, who  
10 are you talking about?

11 A. Darryl Joyce.

12 Q. Do you see that person here in  
13 the courtroom here today?

14 A. Yes.

15 Q. Would you point him out for the  
16 jury?

17 A. (Witness complies.)

18 Q. Which one are you talking  
19 about?

20 A. With the brown on it.

21 Q. Let the record reflect he has  
22 identified the defendant. Now had you  
23 seen this man before?

24 A. Yes, I saw him.

25 Q. Had you seen him at the party

1 before?

2 A. No, not the party.

3 Q. This was the first time you had  
4 seen him at the party?

5 A. Yes.

6 Q. So what happened?

7 A. He walked -- me and him shook  
8 hands. He was standing. I told him that  
9 Boo was there. Then he shook hands.  
10 Then we did -- all of us got to talking.  
11 I guess they disagreed or something,  
12 something, and they got in an argument.

13 Q. You were standing there when  
14 they first came up?

15 A. What now?

16 Q. You were standing there when he  
17 first came up?

18 A. Yeah, we were standing up.

19 Q. And he shook hands with you?

20 A. Yes.

21 Q. But he didn't act like he  
22 wanted to shake hands with James  
23 Friendly?

24 A. Yes.

25 Q. Do you know what that was

1 about?

2 A. No, sir.

3 Q. But did it look to you like  
4 they had at least seen each other before?

5 MR. HARTLEY: Objection, Your  
6 Honor, to the opinion or the subjective  
7 answer of the witness.

8 THE COURT: He can tell what he  
9 saw. Sir, repeat it.

10 Q. Mr. Stewart, from the way Mr.  
11 Friendly -- or Mr. Joyce responded to Mr.  
12 Friendly in shaking hands or not wanting  
13 to shake his hand, did it look like from  
14 where you were standing they had seen  
15 each other before?

16 MR. HARTLEY: Judge, I object.

17 A. Yes.

18 THE COURT: Get him to tell  
19 what he saw.

20 A. He look like he didn't  
21 really --

22 MR. HARTLEY: He is not -- he  
23 hadn't been asked a question yet. Mr.  
24 Powell needs to rephrase the question.

25 THE COURT: Ask a question.

1           Q.     Mr. Stewart, again, what  
2     happened when Darryl Joyce -- after he  
3     shook hands with you, did he shake hands  
4     with James Friendly?

5           A.     Eventually he did.

6           MR. HARTLEY: Only if he knows.  
7     I think that requires a mental operation  
8     or speculation.

9           THE COURT: Don't guess as to  
10    something he is thinking. Just tell us  
11    what you saw.

12          A.     Well, the reaction with his  
13    hand.

14          THE COURT: Reaction with his  
15    hand?

16          A.     His hand on the side and that's  
17    it.

18          Q.     Then what happened?

19          A.     He spoke like he all right. He  
20    shook hands and just put his hand back  
21    down.

22          Q.     Now, after that occurred, what  
23    happened next?

24          A.     We got to talking. Still  
25    talking. Like I said, evidently they had

1           a disagreement on something and an  
2           argument broke out.

3           Q.     Before you get to the argument  
4           what were y'all talking about?

5           A.     Me and Boo --

6           Q.     The three of you. Y'all are  
7           standing there talking. You tell me.  
8           Are you talking -- all three of you are  
9           talking?

10          A.     No. He was. Poncho was  
11          standing. Me and Boo.

12          Q.     Poncho is there. You are here  
13          talking about the defendant?

14          A.     Darryl.

15          Q.     Poncho was just standing  
16          there. What were y'all talking about?

17          A.     Jail stuff, when we were  
18          sitting in jail. Just kicking it.

19          Q.     And he was listening?

20          A.     Yeah.

21          Q.     And then at what point did he  
22          become involved in the conversation?

23          A.     When everybody was joking about  
24          Gibbs Village.

25          Q.     Gibbs Village?

1 A. Yes.

2 Q. What about Gibbs Village? What  
3 does that have to do with anything?

4 A. No. He was like -- it was like  
5 mostly Smiley Court dudes in our cell.  
6 And we were kicking like how we was  
7 kicking it in jail like home boy Smiley  
8 Court talking. But Boo would be with  
9 us. You got your home boy. You know  
10 what you're saying. You know what I'm  
11 saying, he didn't want to talk because  
12 you got the home boy and he was from  
13 Gibbs Village.

14 Q. Now, who was it at Gibbs  
15 Village?

16 A. Who lives in Gibbs Village?

17 Q. Who was running with Gibbs  
18 Village?

19 A. Boo.

20 Q. That's James Friendly?

21 A. Yes.

22 Q. And who is running with Smiley  
23 Court?

24 A. Me.

25 Q. Okay. And do you know anything

1 about the defendant?

2 A. He is from English Village.

3 Q. English Village?

4 A. Yes.

5 Q. Are you aware of any ongoing  
6 dispute between Gibbs Village and English  
7 Village?

8 MR. HARTLEY: Objection, Your  
9 Honor.

10 THE COURT: I will sustain it.

11 Q. At that point when you were  
12 talking about who is where, Gibbs  
13 Village, Smiley Court, that's when the  
14 defendant chimed in?

15 A. Yes.

16 Q. At that specific point?

17 A. Yes.

18 Q. Did he bring anything up before  
19 you started talking about Gibbs Village?

20 A. No. He didn't say nothing at  
21 first.

22 Q. That's when he jumped into it?

23 A. Yes.

24 Q. And then what happened?

25 A. He made a comment about niggers

1                   THE WITNESS: Yes.

2                   Q. How long did that go on?

3                   A. This argument went on about  
4 like ten minutes.

5                   Q. They were going back and forth?

6                   A. Yes.

7                   Q. About who is their own man or  
8 whatever?

9                   A. Yeah. Who can hold their own  
10 on the street or whatever.

11                  Q. Who can hold their own on the  
12 street?

13                  A. Yes.

14                  Q. That is what they were arguing  
15 about?

16                  A. Yes.

17                  Q. Now what did you do?

18                  A. I was telling them chill out.  
19 I was inside of them. I was telling them  
20 to chill out. I was telling them they  
21 had a party. Don't spoil my cousin's  
22 party. Just chill out.

23                  Q. At that point had anyone  
24 exchanged blows or jumping at the other  
25 one or pushed or anything?

1 A. No, sir.

2 Q. Just talking?

3 A. It was just talking.

4 Q. Or arguing?

5 A. Yes.

6 Q. So after you jumped in, tried  
7 to calm everything down, what happened?

8 A. It was calm down but -- they  
9 was still mumbling like. So I said,  
10 y'all show some love. At that point he  
11 gave him a hand shake.

12 Q. So when you are referring to  
13 show some love, you are talking about  
14 shaking hands and making up?

15 A. Yes, sir.

16 Q. At least talking about it?

17 A. Yes.

18 Q. Did that happen?

19 A. Yeah, they shook hands.

20 Q. What is supposed to happen now?

21 A. He walked over to me and Boo  
22 went back in front.

23 Q. And where did you go?

24 A. I was going to get a beer out  
25 of the house, from the party.

1 Q. Did you do that?

2 A. Yes, I went and got a beer.

3 Q. At that point you left Mr.  
4 Friendly alone out on the porch?

5 A. Yes.

6 Q. Is that correct?

7 A. He wasn't invited to the party.

8 Q. So he didn't feel comfortable  
9 going inside the house?

10 MR. HARTLEY: Objection, Your  
11 Honor. He is asking what Mr. Friendly  
12 would be thinking.

13 THE COURT: Sustained.

14 Q. What happened when you came  
15 back? Did you get a beer?

16 A. Yeah, I got a beer.

17 Q. What happened?

18 A. They bring the argument back  
19 up.

20 Q. Who is arguing now?

21 A. Boo and Poncho.

22 Q. The same two before?

23 A. Yes.

24 Q. Same defendant that is sitting  
25 over here?

1 A. Yes.

2 Q. And any doubt in your mind  
3 that's the guy?

4 A. That's him.

5 Q. That's him?

6 A. Yes, sir.

7 Q. What was the argument going on  
8 about this time when you came back out of  
9 the apartment?

10 A. It was basically the same thing  
11 about he was talking about earlier. I  
12 heard James Friendly told him, man, I  
13 ain't going nowhere. I saw you sleeping  
14 on the porch, if I wanted to do something  
15 to you.

16 Q. You heard the victim say that,  
17 Mr. Friendly?

18 A. Yes.

19 Q. Said he had seen him before?

20 A. Yes. He was on the porch  
21 sleeping in Smiley Court.

22 Q. Then what happened?

23 A. Me and Boo proceeded to go back  
24 on the side where we was.

25 Q. What was the reason for that?

Part 2 of 5

DOCUMENT NAME:

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CLIENT & MATTER:

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County: Montgomery

LWOP

CC#s: 2002-1417

Attorney: Jean Therkelsen

Circle:  TRANSCRIPT    CASE FILE    BOTH

3 volumes  
MMV

### CERTIFICATION

I hereby certify that the preceding imaged records and documents  
are a true, accurate, and complete image of the original records or  
documents as received by the Office of the Attorney General of  
the State of Alabama.

This the 19<sup>th</sup> day of January, 2005.

Signed: Melissa A. Martin

Notary: Coleen F. Gibson

Coleen F. Gibson  
Notary Public  
Commission expires 06/11/06